IN THE

Supreme Court of the United States.

THE UNITED STATES OF AMERICA, Appellees, *v.* VICENTE PERALTA AND OTHERS. MIERS F. TRUETT, Intervenor, Surviving Appellant.	No. 172.

REPLY BRIEF ON THE PART OF APPELLANTS.

Jurisdiction.

This is a direct appeal to this court from an order of the District Court of the United States for the Northern District of California, denying a motion by appellants for the execution of the final decree of confirmation in a California Private Land Case.

The motion was made upon a verified petition or affidavit setting forth at large the proceedings had in the case before the Board of California Land Commissioners, the District Court and this court on appeal, resulting in the decree of which we seek execution.

These proceedings were brought and prosecuted under the provisions of the act of Congress of March 3, 1851, entitled "An Act to ascertain and settle the Private Land Claims in the State of California." (9 Stat. at Large, 631.)

The property affected is the Rancho of San Antonio, now in Alameda County, California. The grant of it was made in 1820, by Sola, the last Spanish governor of Alta California, and was accompanied with juridical possession (livery of seisin). The grant was of a specific tract of land to Don Luis Peralta, by natural boundaries.

Luis Peralta entered into possession under this grant and maintained that possession, open, notorious, adverse and exclusive, until the admission of California into the Union in 1850, and thereafterward until his death. This possession was notice to all the world of the right and title of the grantee. He died possessed of this rancho in the year 1851. He left a will in which he devised this property to his four sons as tenants in common.

The four sons, Antonio, Ignacio, Vicente and Domingo Peralta, presented their joint petition for confirmation on the 21st day of January, 1852, to the Board of Land Commissioners created under the act. It is set forth in the record at page 5.

This petition presented the claims in respect of this grant — was it a genuine grant of the former government and were the petitioners entitled to ask for its confirmation?

The Board confirmed the grant; the District Court confirmed it; and this court, on appeal, confirmed it. This court, in its decree, established the exterior boundary lines of the grant as they are shown by the record in this case — in the survey and plat of 1895. (*United States* v. *Peralta*, 19 How. 343.)

The decree which the District Court entered was made in 1855. The decree of this court was made at its December term, 1856, and handed down early in 1857. The decree of this court established the exterior boundaries of the rancho in accordance with the juridical possession which had been delivered to Luis Peralta. In November,

1859, the District Court acted under the mandate of this court to the extent of conforming its decree of 1855 to the opinion of this court. (Record, p. 8.)

The petition on which this motion was founded asked for execution of this decree. The order of the District Court denying this relief is the order appealed from. This order was a final disposition of the rights of appellants.

It denied them the only relief to which they were entitled under this decree of confirmation, on the ground that this decree had been reversed by the District Court. (*Lewisburg Bank* v. *Sheffey*, 140 U. S. 445.)

The question presented for the consideration of this court on this appeal would seem to be simple and easy of solution.

Has the decree of the District Court entered pursuant to the mandate of this court been executed?

The question may be stated in another way:—

Has the District Court jurisdiction and power to reverse, annul and set aside its decree which had been entered in pursuance of the mandate of this court?

Has it any duty to perform in respect of such decree, other than to execute it?

Presented in this form it seems startling, but it is not novel.

It was presented to this court nearly forty years ago in a California Private Land Case, and was considered and determined by it adversely to this contention, in relation to the Rancho Canada de los Capitancillos.

That case is entitled the *Fossat* or *Quicksilver Mine* case, and is reported in 2 Wallace, at page 649.

The decree, by which the like performance was accomplished in the present case, was entered several years before the decision was filed in the *Fossat* case.

It will thus be seen that consideration of the scope and purpose of the act of Congress of March 3, 1851, is directly

brought in question in considering the power of this court to entertain the present appeal.

The United States had acquired from Mexico by purchase through the Treaty of Guadaloupe Hidalgo a vast extent of territory including what now constitutes the State of California. This treaty imposed upon her certain political and contractual duties and obligations which it was the duty of Congress to perform or provide for their performance.

The act of 1851 was passed to enable Congress to perform these duties and obligations. The scheme involved in it was devised to relieve Congress of the onerous duty of herself performing them. Congress might have acted in their performance directly, but she chose to confer the power upon the instrumentalities provided in the act, in respect of lands in the State of California. The act conferred jurisdiction upon these instrumentalities to do all that Congress could herself have done in performance of these duties and obligations. (*Astiazaran* v. *Santa Rita Mining Co.* 148 U. S. 80, 81.)

The act was plain, simple, symmetrical, complete and admirably adapted to accomplish these purposes and Congress surrendered to these instrumentalities her power over the subject.

She thereby invested them with power to receive the claims of title to real property derived from the former Governments of Spain and Mexico, and to investigate the claims thus presented; with jurisdiction to determine as between the United States and the claimants, whether the grant under which claim was asserted was valid and entitled to recognition under the treaty—and with power to pronounce judgment.

This act was not merely a code of procedure. It was an offer by the United States to the claimants under the former Governments, that if they would submit their

claims of title to the investigation of these tribunals they should receive the like recognition as her own citizens were entitled to, under grants of land from this Government. That if they failed to present their claims within a limited time they should forfeit their property; but presenting them and establishing them should be entitled to a patent from the United States.

Presenting the claim was an acceptance of this offer and established a vested right in the claimant to the relief provided for. (*Hancock* v. *Walsh*, 3 Woods, 351; *Reichart* v. *Felps*, 6 Wall. 165; *United States* v. *Adams*, 6 *Id.* 107.) Appeal to this court was portion of such relief.

But the act of 1851 went further; it not only conferred jurisdiction to pronounce judgment and execute it, but it laid down the rules by which these tribunals should be guided in rendering judgment.

It made the decree of the Board; of the District Court; of this court; whichever became final, conclusive between the claimant and the United States.

The decree thus became the law of the case. It was *res adjudicata* of all the matters litigated between the parties or which might have been litigated in the proceeding.

The decree was made conclusive forever of the rights which it had established, and as they alone had jurisdiction to pronounce it, the power to execute it was only theirs.

No other court and no other tribunal could administer the relief to which the prevailing party was entitled under this Act. The right to that relief in the mode prescribed was a vested right which repeal of the act of 1851 itself could not destroy after petition filed.

That Act stands unrepealed to this day, the foundation of all the acknowledged titles in California derived from Spain or Mexico.

Jurisdiction to pronounce judgment included the power to execute it.

The United States invited the litigation; compelled it, under the severest penalty that she could inflict, viz: forfeiture of the granted lands; and as a litigant she can claim no rights which can not be asserted by an ordinary litigant, and she is equally bound by the results of the litigation.

It is by execution alone that the successful party can reap the fruits of his judgment.

Jurisdiction conferred and acted upon could not be taken away. Nor could Congress, after judgment, hamper execution by the imposition of new and onerous conditions or restrictions.

What was the law for the tribunal when its decree was pronounced is the law for it at this day, when its aid is invoked to award execution.

Considered as a Code of Procedure, the Act of 1851 provided a complete judicial system for the disposition of California Private Land Claims. This system was simple, unique and independent. It was not, nor was any procedure under it, a portion of the Federal Judicial System. The appeal to this court there provided for was not a portion of the appellate jurisdiction of that system. When all the cases provided for in the Act of 1851 shall have had their day in court, and they must have nearly, if not quite all been disposed of, the act will die a natural death. It can not be extingished by legislative action.

Appeal to this court in this class of cases will then have ceased.

The language of the act by which appeal is authorized from the decree of the District Court to this court is mandatory. The District Court is commanded to grant it to the losing party, if he requests it.

If the claimant was unable to give security for costs he should be at liberty to sue out the appeal *in forma pauperis*, that every one, however high or lowly, should have access to this court, to have his rights determined under the treaty.

This court held in the *Fossat* case that a decree of the District court affirming the validity of a grant from the former government without determining the boundaries of the grant was not interlocutory—was an appealable decree. But after this court had passed upon such decree, it should be sent back to the lower court for the purpose of ascertaining the boundaries and for final execution. That when the lower court had acted in this direction a further appeal would then lie to this court to determine whether its action had been had in conformity with the provisions of the act and the decree. That this right existed until the object of the Act had been fully accomplished. (21 How. 450, 451; 23 *Id.* 499.)

Mr. Justice Clifford said in 2 Wall. 726, if the court below adjudged the grant to be valid, it was the duty of that court to ascertain and fix the boundaries as a part of the original adjudication.

This was the form of the decree in the present case; it adjudged the grant to be valid and that the claim attached to the granted lands by the boundaries therein specified.

The character of the scope and purpose of the Act of 1851 was the subject of an instructive and exhaustive commentary in the opinions delivered by Mr. Justice Field and by District Judge Hoffman, in which opinions Circuit Judge Sawyer concurred, in deciding the cases of the United States against Flint and others.

A report of these cases will be found in Vol. 25 Federal cases, No. 15,121.

And to these opinions we earnestly direct the attention

of this court, sustaining as they do our contention in reference to this act.

Considering the question, as an original proposition, independently of the Act of 1851, what is the rule of law which should govern it?

The decree being final, nothing remained to be done but execution. The party in whose favor it went was at once entitled to execution of it; execution of it in pursuance of the law then in force.

This is common learning.

This is the doctrine laid down in the following cases:

Perkins v. *Fournequet*, 14 How. 328–330;
Chicago, etc. v. *Fosdick*, 106 U. S. 83;
City Bank of North v. *Hunter*, 152 *Id.* 515;
Central National Bank v. *Stevens*, 169 *Id.* 432, 464;
The United States Steamboat Co. 178 *Id.* 317, 318;
See also *Ex parte Blake* and others, 175 *Id.* 114.

This court had jurisdiction to cause its judgments or decrees to be executed, whenever its attention should be called by a party in interest to its non-execution by the lower court; we claim that in such a case mandamus is a proper remedy.

We contend that wherever mandamus will lie to compel execution, appeal will also lie from an order of the lower court refusing execution. That is the doctrine of this court as we deduce it from the cases just cited.

Congress may prescribe rules and regulations for the disposition of the public domain.

With respect of the right of the citizen to property its legislation may prescribe the means for its ascertainment and settlement between him and the United States.

When, however, that right is ascertained and determined, it becomes personal to the citizen of the State; antedates the treaty, and brings it within the protecting *ægis* of the Constitution of the United States and of the

State of California. (*United States* v. *Conway*, 175 U. S. 69.) Subsequent Federal legislation can not affect the right thus established. Federal power can not regulate him out of it.

The decree of this court does not create title. It determines that title exists and who is its owner. In like manner the certificate of the land office determines the title to lands acquired from the United States, before patent issues, and patent follows the certificate. This decree is a finality upon the question of title by the boundaries specified.

This is the character of the decree in the case at bar.

Congress could not interfere with the right thus vested in the citizen. The right which had accrued, the right to patent.

It could not thereafter deprive him of his property without due process of law and due compensation.

Section 13 of the Act of 1851 provides how the right thus established should be evidenced.

The Surveyor-General was to survey the confirmed grant, and the General Land Office, upon being presented with a copy of the decree and a plat of the survey, was required to issue a patent for the confirmed claim.

Provision was made in Section 13 for contest of the right to the patent. This contest was limited to parties claiming by derivative title under the original grantee. It had no application to strangers to the title. It had no application to parties to the proceeding. Their rights had been adjudicated. They had had their day in court, and were estopped by the decree.

The contest provided for was not a contest in the Federal Courts. It was a contest in the courts of the State, and the issuance of a patent was to be enjoined by the District Court until the contestants had reasonable time to establish their better right to the patent in those courts.

In the case at bar there was no such contest. No such injunction — no bar to the issuance of a patent to the confirmee.

This survey was made and a copy of the decree was presented in 1896 with the plat of survey to the land office and patent demanded, and as shown by the record, the patent was refused, and no patent has ever been issued to the confirmees.

This brings us directly within the case of *United States* v. *Fossatt* (21 How. 451) and entitles us to come to this court for the relief sought on this motion.

The Acts of 1860, 1864 and 1891 have no application to the case at bar. They were passed long after the decree of 1855 as amended by direction of this court had become final, had become the law of the case. Long after the right of the claimants to have the decree enforced in conformity with the Act of 1851 had become a fixed, vested right.

We shall not attempt to follow the learned counsel for the United States in his able and elaborate brief.

If, as claimed by him and as assumed by the learned judge of the court below, the decree of the District Court of 1855, as amended by decree of this court in 1859, was not a final decree under the act of 1851, we have wholly mistaken the scope and purpose of that act and the decisions of this court.

We call the attention of this court to the views expressed by the learned judge of the District Court in his opinion denying the present motion, and especially to those portions of his opinion which we have quoted at page 38 of our opening brief.

The learned judge is of the opinion that the District Court had power to reverse and set aside its own decree—to reverse and set aside the decree of this court—and to substitute in their place another and different decree, and

that execution of this substituted decree deprived that court of power to execute its original decree.

These propositions must be sustained to support the conclusions reached by that court and which constitute the basis of the arguments advanced on behalf of the United States.

We have the highest respect for the personal character, learning and ability of the Judge of the District Court of Nevada, Judge Hawley.

We claim, however, that he was misled as to the facts of this case, and possibly as to the law, by the opinion of Judge Hoffman on the question of survey in this case, in which he held that the Act of 1860 was a universal panacea for all the ills which afflicted court, counsel and litigant in California Private Land Cases, to the extent of giving the District Court power to reverse itself and to reverse this court and retry the whole case.

Had Judge Hawley in this opinion omitted all that hinged upon the proposition that the Act of 1860 conferred upon the District Court power to reverse, annul and set aside its own decree, even when that decree was entered in pursuance of a mandate of this court, very little would have been left of value to this case in the opinion. The conclusion he reached could only be justified by reversing and setting aside the decree of 1859 and accepting as a final decree the decree which the court below had substituted for that decree.

The learned counsel for the United States suggests at page 14 of his brief that this appeal should be dismissed because the action has relation to the controverted execution of a decree of the District Court under the provisions of the Act of March 3, 1851, and amendatory acts, citing Acts of June 14, 1860, and Act of July 1, 1864. It did not occur to him that these acts were passed after the jurisdiction conferred by the Act of 1851 had been acted

upon and final decrees entered by the District Court and this court.

The District Court erred in holding that the Act of 1860 has any application to the case at bar, for the reasons:

First. That the amendment of 1860 was an attempt by Congress to amend § 13 of the Act of 1851 after the passing of the final decree in this case under that act, within the jurisdiction thereby conferred.

Second. That it imposed new and onerous conditions upon the claimant in addition to those imposed by that act.

Third. That it introduced new issues between new parties and on additional evidence. Opened the door to the whole world to take part in a contest which by the terms of the Act of 1851 was limited to the claimants and the United States, and which that act declared *should not* affect the rights of third persons.

Fourth. That the contest on the title, the title to the land claimed, provided for in the act had already taken place and had become final by the passing of the decree.

Fifth. That the surveys referred to in the amendment were to be surveys of the grant which had been confirmed and as to which § 13 provided the only means by which, and the only purpose for which such surveys could be contested.

Sixth. When the land to be surveyed was not a specific tract but a float, Mexico reserved the right to locate it, and to this right the United States succeeded. Limited to this right, the act of 1860 enabled the United States to determine what land belonged to her and what to the confirmee. She had an interest in the land within which the float was to be located. She anchored the float by survey and passed the title by patent. (*Graham* v. *United States*, 4 Wall. 259; *United States* v. *Pico*, 5 Wall. 536; *Fremont* v. *United States*, 17 How. 565.)

For similar reasons the Act of 1864 is inapplicable to the case at bar.

For similar reasons the Act of 1891 is inapplicable to the case at bar.

And also because that act was limited to a distribution of the "Appellate jurisdiction of the National Judicial System." (*McLish* v. *Roff*, 141 U. S. 661, 666.)

As the appeal provided for in the act of 1851 from the District Court to this court was not portion of the National Judicial System, it was not repealed by the Act of 1891, which only repeals acts inconsistent with the provisions of §§ 5 and 6 of that act.

When a court is acting under a special statutory power, it is governed by the terms of the act, and such act is never repealed by implication.

On the same third day of March, 1891, on which the act was passed creating the Circuit Court of Appeals, an act was passed creating a Court of Private Land Claims, to pass upon titles derived from Spain and Mexico in the Territory outside of California.

This act gives appeal direct to this court from that court in terms nearly identical with the terms of the Act of 1851. This, with the failure to make provision for Private Land Claims in California in the act creating the Circuit Court of Appeals, would indicate that it was the settled policy of Congress that all titles emanating from the former Government should be submitted for final action only to this court. The cases cited in the reply brief show that such appeals are entertained by this court without question.

The treaty of Guadaloupe-Hidalgo still exists as it did in 1848, a living, operative principle, a source of power and sovereignty in the United States over the territory comprised in half a dozen States and Territories of this Union. It has never been abrogated. No right cre-

ated, no territory acquired under it has ever been surrendered. Nor will it ever be abrogated while the stars and stripes still float over this Capitol.

The Act of 1851 by which the rights of the people who then occupied and who now occupy this territory, to be secure in their person and property under the protection of the Constitution, were consecrated, still lives, still consecrates those rights. It has never been repealed, nor can it be, so long as those rights exist and need its protection. The act clings to the treaty as does the ivy to the oak. The national honor is concerned in their continued existence. The faith of this Government was pledged to Mexico and her people and their successors by the treaty, and so also was it pledged by the Act of Congress,which gave life and form and execution to that treaty. The act of 1851, the treaty and the Constitution of the United States became the supreme law of the land. They live and survive together, together they bind every department of this Government—judicial, legislative and executive.

In dealing with the question of the jurisdiction of this court, we have given expression to our contention that the issues presented by the petition to the Board were the validity of the grant, its extent and boundaries and the right of the claimants to confirmation.

That these issues had been fairly met by the United States, had been decided adversely to her, and that the decree of confirmation had become the law of the case and was *res adjudicata* between the United States and claimants and conclusive of their respective rights.

That this was the situation when, on November 30th, 1859, the final decree of confirmation was entered in case No. 100 of the District Court, this case.

This decree has a double aspect. It adjudges the granted lands to be the property of Peralta's Sons. It,

in effect, decides that the United States had no interest in this property, consequently no interest in resisting execution of the decree.

No one claiming under the United States can have any interest in this property, nor can they be interested in resisting this motion. They are equally estopped by the decree. (*United States* v. *Morillo*, 1 Wall. 706.)

If they, or either of them, are successful, they gain nothing. If they lose, they lose nothing.

What is it and how is it that the United States or claimants under her will gain or lose as the result of this contest?

The United States holds the legal title in trust for the grantee of Spain. She can part with it to no one else. She has never parted with it to any one.

We have characterized the subsequent proceedings of the District Court in this case as *coram non judice*.

We asserted that when the validity of the grant and its boundaries were established the jurisdiction of the federal tribunals was exhausted on the question of title to the property adjudicated upon. But the District Court took a different view of the matter. It asserted the right to partition the land of the rancho among the tenants in common and proceeded to award and decree to two of the claimants the northern portion—to Antonio the next portion going south, and to Ignacio the southern portion.

In so doing it was not exercising Federal jurisdiction. It usurped the functions of the State judiciary.

By the same decree of 1859 it assigned to Domingo and Vicente in severalty the northern portion of the rancho.

By another decree in another case, case No. 98, in the District Court it set off to Antonio, in severalty, another portion of the rancho.

And by still another decree in another case, case No. 99,

in said court, it set off to Ignacio, in severalty, another portion of said rancho.

We contend that these decrees were void for want of jurisdiction. What Mexico had done, not what her grantee had done, was a matter of Federal concern. All action had in the District Court subsequently in case No. 100 (this case) was had in relation to the northern portion of the grant. It included surveying a division line between the land assigned to Domingo and Vicente on one hand and Antonio on the other, within the exterior boundary of the lands confirmed.

The partition was based on an alleged stipulation of the parties which made their dividing lines coincident from the Bay shore to the Sierra. And the several decrees followed the stipulation in this respect, and the original surveys, the rejected surveys, followed the decrees.

The District Court, claiming the right to reverse the decrees of this court under the act of 1860, rejected these surveys, reversed the decree of this court, made new decrees, and advised the surveyor to conform his surveys to these new decrees, and when the new surveys came in the court confirmed them, and the patents issued were issued upon these surveys.

The new surveys omitted 2,352 acres of lands confirmed which had been included in the rejected surveys. The patents issued excluded the same 2,352 acres, and it is because of this omission, and because the issued patents do not include all the lands confirmed, is why we are now seeking execution of the final decree of November 30, 1859.

We claim, and it is admitted, by the Land Department that the survey of 1895 is the only survey of this grant which was ever made or filed, and we further contend that we are entitled to patent upon this survey.

It did not occur to the court below in considering this

motion that there is no appeal to Congress from the decrees of this court.

Nor is it true, as assumed by the learned counsel for the United States in his brief, that there has ever been any survey of this grant under this 13th section of the act of 1851 or under the act of 1860, or the act of 1864, except the survey of 1895.

It is this unwarranted assumption by Judge Hawley that led him to hold that the alleged decree of 1871 was the final decree in this case, and the like assumption is manifest in the brief of the learned counsel for the United States.

The decrees of 1871, on which survey was founded, were not surveys of the grant, but of farms within the grant, and were void. A void decree can not be foundation for valid ministerial action under it.

The patents already issued were based upon these void surveys and were also void on their face.

Our further contention is, that where it is made to appear to the court that the Department has failed to patent all the land confirmed it is the duty of this court, and it has power to instruct the Department while the case is *sub judice*, to issue a patent which will embrace the omitted lands.

Errata.

Some errors inadvertently committed in our opening brief we desire now to correct.

The case of *U. S.* v. *Flint* on pages 10, 11, 14, 20, 42, and 53 should have been *Fed. Cas.* 15,121.

The cases of *Halleck*, *Graham and Pico*, cited on page 24, should have been from Wallace instead of Howard.

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